

)	
R.H., Appellant)	
)	
and)	Docket No. 19-0311
)	Issued: July 2, 2019
U.S. POSTAL SERVICE, POST OFFICE,)	
Cleveland, OH, Employer)	
)	

Case Submitted on the Record

Office of Solicitor, for the Director

Before:
CHRISTOPHER J. GODFREY, Chief Judge
PATRICIA H. FITZGERALD, Deputy Chief Judge
JANICE B. ASKIN, Judge

On November 27, 2018 appellant, through counsel, filed a timely appeal from an October 9, 2018 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act² (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

The issue is whether appellant has met his burden of proof to establish an occupational disease causally related to the accepted factors of his federal employment.

¹ In all cases in which a representative has been authorized in a matter before the Board, no claim for a fee for legal or other service performed on appeal before the Board is valid unless approved by the Board. 20 C.F.R. § 501.9(e). No contract for a stipulated fee or on a contingent fee basis will be approved by the Board. *Id.* An attorney or representative's collection of a fee without the Board's approval may constitute a misdemeanor, subject to fine or imprisonment for up to one year or both. *Id.*; *see also* 18 U.S.C. § 292. Demands for payment of fees to a representative, prior to approval by the Board, may be reported to appropriate authorities for investigation.

² 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

This case has previously been before the Board. The facts and circumstances as set forth in the Board's prior decision are incorporated herein by reference. The relevant facts are as follows.³

On June 3, 2016 appellant, then a 54-year-old electronic technician, filed an occupational disease claim (Form CA-2) alleging that he suffered pain in his right wrist, forearm, and elbow due to federal employment duties. He noted that he first became aware of his right arm condition on July 17, 2000 and realized its relationship to his federal employment on July 30, 2014. On the claim form, appellant explained that he delayed in filing this claim as he believed his prior accepted claim remained open.⁴ The record does not indicate that he stopped work.

In a March 1, 2016 statement, appellant described his right arm symptoms, relating that loss of strength made his job difficult since he was required to frequently use tools that required both repetitive rotating motion while simultaneously exerting extreme force. He noted that he was not totally disabled from all work, but asked that the tasks that required the use of a forceful torque motion, strenuous pulling, and lifting be eliminated.

By decision dated August 31, 2016, OWCP denied the claim finding that appellant had not submitted sufficient information to establish that the employment events occurred as alleged. It also noted that he had not established a diagnosed medical condition causally related to an alleged employment event.

Appellant, through counsel, requested reconsideration on December 2, 2016. By decision dated March 1, 2017, OWCP modified the August 31, 2016 decision finding that appellant had established that the claimed employment events occurred as alleged. However, the claim remained denied because the medical evidence of record failed to establish causal relationship between his work exposure and diagnosed medical condition.⁵

Appellant subsequently appealed to the Board. By decision dated September 21, 2017, the Board affirmed the March 1, 2017 OWCP decision, finding that he had not met his burden of proof to establish his occupational disease claim, as the medical evidence of record was insufficient to establish causal relationship between the accepted employment factors and a diagnosed medical condition.⁶

On July 12, 2018 appellant, through counsel, requested reconsideration and submitted a December 7, 2017 progress report from Dr. Harry A. Hoyen, Board-certified in orthopedic and hand surgery. Dr. Hoyen noted appellant's history of severe right wrist and forearm injuries with

³ Docket No. 17-1141 (issued September 21, 2017).

⁴ The present claim was assigned File No. xxxxxx755. In a claim adjudicated by OWCP under File No. xxxxxx543, OWCP accepted that on July 17, 2000 appellant sustained an open fracture of the right radius when his right arm was caught in a conveyor belt. It expanded acceptance of the claim to include right forearm keloid scarring.

⁵ OWCP thereafter administratively combined File Nos. xxxxxx755 and xxxxxx543, with File No. xxxxxx543 serving as the master file.

⁶ *Supra* note 3.

a complaint of continued moderate-to-severe radiating pain. He described examination findings of limited forearm motion, with tenderness over the distal radial ulnar joint (DRUJ) and wrist, and some crepitus. Right wrist x-ray demonstrated remote and healed trauma with malunion fractures and post-traumatic DRUJ degeneration. Dr. Hoyen advised that appellant's right wrist condition had progressed overtime, opining that this was due to the original fracture injury that had healed in a malunion position which placed the wrist and DRUJ in a biomechanically stressed position. He further indicated that this had been compounded by the repetitive stress of appellant's job that required loading of the wrist and forearm on a daily and near continuous basis.

By decision dated October 9, 2018, OWCP denied modification of its prior decision, finding that the evidence of record was insufficient to establish causal relationship between the accepted employment factors and a diagnosed medical condition.

LEGAL PRECEDENT

An employee seeking benefits under FECA⁷ has the burden of proof to establish the essential elements of his or her claim including the fact that the individual is an employee of the United States within the meaning of FECA, that the claim was timely filed within the applicable time limitation of FECA,⁸ that an injury was sustained in the performance of duty as alleged, and that any disability or specific condition for which compensation is claimed is causally related to the employment injury.⁹ These are the essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.¹⁰

To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit the following: (1) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; (2) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; and (3) medical evidence establishing that the employment factors identified by the claimant were the proximate cause of the condition for which compensation is claimed or, stated differently, medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant.¹¹

To establish causal relationship between the condition, as well as any attendant disability claimed and the employment event or incident, the employee must submit rationalized medical opinion evidence supporting such causal relationship.¹² The opinion of the physician must be

⁷ *Supra* note 2.

⁸ *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

⁹ *J.M.*, Docket No. 17-0284 (issued February 7, 2018); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

¹⁰ *K.M.*, Docket No. 15-1660 (issued September 16, 2016); *L.M.*, Docket No. 13-1402 (issued February 7, 2014); *Delores C. Ellyett*, 41 ECAB 992 (1990).

¹¹ *Id.*

¹² *J.T.*, Docket No. 18-1755 (issued April 4, 2019).

based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.¹³ This medical opinion must include an accurate history of the employee's employment injury and must explain how the condition is related to the injury. The weight of medical evidence is determined by its reliability, its probative value, its convincing quality, the care of analysis manifested, and the medical rationale expressed in support of the physician's opinion.¹⁴

ANALYSIS

The Board finds that this case is not in posture for decision.

Preliminarily, the Board notes that it is unnecessary for the Board to consider the evidence appellant submitted prior to the issuance of OWCP's March 1, 2017 decision because the Board has already considered that evidence in its September 21, 2017 decision.¹⁵ Findings made in prior Board decisions are *res judicata* absent any further review by OWCP under section 8128 of FECA.¹⁶

With his July 12, 2018 reconsideration request appellant submitted a December 7, 2017 report in which Dr. Hoyen, his attending hand surgeon, advised that the original injury had healed in a malunion position which placed the wrist and DRUJ in a biomechanically stressed position, with x-ray evidence of DRUJ degeneration. Dr. Hoyen further indicated that this had been compounded by the repetitive stress of appellant's job that required loading of the wrist and forearm on a daily and near continuous basis.

The Board finds that, while Dr. Hoyen's December 7, 2017 report was not completely rationalized, it raises an uncontroverted inference of causal relationship between his current degenerative right wrist condition and the accepted factors of his federal employment. This report is therefore sufficient to require OWCP to further develop the evidence of record.¹⁷

It is well established that, proceedings under FECA are not adversarial in nature and, while the claimant has the burden of proof to establish entitlement to compensation, OWCP shares responsibility in the development of the evidence to see that justice is done.¹⁸

The Board will therefore remand the case for further development. On remand the Board shall, prepare a statement of accepted facts, and thereafter obtain a rationalized opinion from an appropriate Board-certified physician as to whether appellant's current right wrist condition was

¹³ X.V., Docket No. 18-1360 (issued April 12, 2019).

¹⁴ T.W., Docket No. 18-1436 (issued April 14, 2019).

¹⁵ *Supra* note 3.

¹⁶ T.H., Docket No. 18-1585 (issued March 22, 2019).

¹⁷ *Supra* note 13.

¹⁸ A.S., Docket No. 18-1381 (issued April 8, 2019).

causally related to the accepted factors of his federal employment, either directly or through aggravation, precipitation, or acceleration.¹⁹ Following this and any other such further development as deemed necessary, OWCP shall issue a *de novo* decision.

CONCLUSION

The Board finds that this case is not in posture for decision.

ORDER

IT IS HEREBY ORDERED THAT the October 9, 2018 decision of the Office of Workers' Compensation Programs is set aside, and the case is remanded to OWCP for proceedings consistent with this opinion of the Board.

Issued: July 2, 2019
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

Janice B. Askin, Judge
Employees' Compensation Appeals Board

¹⁹ *Supra* note 13.